

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
STATESVILLE DIVISION
CRIMINAL DOCKET NO.: 5:06CR44**

| | | |
|---|---|--------------|
| UNITED STATES OF AMERICA |) | |
| |) | |
| vs. |) | |
| |) | ORDER |
| CRAIG DANIEL LEVINER (6), |) | |
| |) | |
| Defendant. |) | |
| <hr style="width: 40%; margin-left: 0;"/> |) | |

THIS MATTER is before the Court on the Government’s “Notice of Appeal and Motion for Revocation and Stay of the Magistrate’s Order” and Defendant’s “Opposition to Government’s Motion for Revocation and Stay of the Magistrate’s Order,” both filed August 14, 2006.

On July 27, 2006, Defendant was charged by way of a Bill of Indictment with conspiracy to possess with intent to distribute methamphetamine, in violation of 21 U.S.C. §§ 841, 846 (Count One), and eight counts of possession with intent to distribute methamphetamine and aiding and abetting, in violation of 21 U.S.C. § 841 and 18 U.S.C. § 2 (Counts Three through Ten). Chief United States Magistrate Judge Carl Horn presided over Defendant’s original detention hearing on August 14, 2006.

Since the Grand Jury found that probable cause exists that Defendant committed an offense for which a maximum term of imprisonment of ten (10) years or more is prescribed, a rebuttable presumption arises that no condition or combination of conditions will reasonably assure the appearance of a person as required and the safety of the community. 18 U.S.C. § 3142(e). Defendant contends that this presumption is rebutted in this matter due to the fact that

he has no prior criminal history, he has maintained good employment, he has strong family ties, he has no history of illegal drug use, and the pre-trial division of the United States Probation Office recommended release. At the conclusion of the hearing, Magistrate Judge Horn granted Defendant's Motion for Bond and released Defendant. The Magistrate Judge concluded that the fact that the Probation Office recommended that Defendant be released, that Defendant has no prior criminal history, and that Defendant has strong family ties were all sufficient factors to warrant release at that time. Moreover, Magistrate Judge Horn released the Defendant upon the conditions that Defendant: (1) execute an unsecured bond of \$100,000, which is to be co-signed by his parents; (2) reside with his parents; (3) obtain employment in order to support his children; (4) comply with electronic monitoring; and (5) receive counseling if so deemed appropriate by the Probation Office. The Government opposes this release and moves for an Order of Revocation of the Magistrate Judge's Order of Release.

This Court reviews *de novo* the Magistrate Judge's detention order. *United States v. Williams*, 753 F.2d 329, 333 (4th Cir. 1985). The Court has reviewed the recording of the hearing before Magistrate Judge Horn, as well as the contents of the criminal file in this matter. In determining whether there are conditions of release that will reasonably assure the appearance of the Defendant and the safety of other persons and the community, the Court must consider all the evidence regarding:

- (1) the nature and circumstances of the offense charged, including whether the offense is a crime of violence or involves a narcotic drug;
- (2) the weight of the evidence against the person;
- (3) the history and characteristics of the person, including –
 - (A) the person's character, physical and mental condition, family ties,

employment, financial resources, length of residence in the community, community ties, past conduct, history relating to drug or alcohol abuse, criminal history, and record concerning appearances at court proceedings; and

(B) whether, at the time of the current offense or arrest, the person was on probation, on parole, or on other release pending trial, sentencing, appeal, or completion of sentence for an offense under Federal, State, or local law; and

(4) the nature and seriousness of the danger to any person or the community that would be posed upon the person's release. . . .

18 U.S.C. § 3142(g).

Upon review of these factors and for the reasons stated herein, the Court accepts the Magistrate Judge's finding that bond is appropriate. In support of this finding, the Court finds it significant that Defendant has no prior criminal history, has no history of illegal drug use, has strong family support, and the United States Probation Office recommended release. Moreover, as found by the Magistrate Judge, the Defendant has ties to the community, held a full-time job prior to his arrest, and has a residence where he can live upon release.

Defendant will live with his parents while out on bond and will work full-time to support his children. Moreover, Defendant will be supervised by electronic monitoring. Taking all of the factors into consideration, the Court finds that this combination of conditions, along with the requirements imposed by the Magistrate Judge, will reasonably assure the appearance of Defendant and the safety of the community.

IT IS, THEREFORE, ORDERED that the Government's "Notice of Appeal and Motion for Revocation and Stay of Magistrate's Order" is hereby **DENIED**. Accordingly, the Order of Magistrate Judge Horn authorizing release is hereby **AFFIRMED**.

IT IS FURTHER ORDERED that Defendant be released upon the same terms and

conditions as ordered by Magistrate Judge Horn on August 14, 2006.

IT IS FURTHER ORDERED that the Clerk certify copies of this Order to Defense Counsel, the United States Attorney, the United States Marshal Service, and the United States Probation Office.

Signed: August 15, 2006

A handwritten signature in black ink, reading "Richard L. Voorhees", written over a horizontal line.

Richard L. Voorhees
United States District Judge

